

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. S-2744**

**PETITION OF DONALD AND TONYA GILCHRIST**

OPINION OF THE BOARD  
(Opinion Adopted April 8, 2009)  
(Effective Date of Opinion: May 28, 2009)

Case No. S-2744 is an application for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on February 12, 2009 and on March 16, 2009 issued a Report and Recommendation for approval of the special exception.

Decision of the Board:                      Special Exception **Granted** Subject  
To the Conditions Enumerated Below.

The subject property is Lot 3, Block 28, Calverton Subdivision, located at 12528 Palermo Drive, Silver Spring, Maryland, 20904, in the R-90 Zone

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on April 8, 2009. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioners are bound by their testimony and exhibits of record, including the house location plan/landscape and lighting plan, Ex. 5, to the extent that such evidence and testimony are identified in the Hearing Examiner's Report and the Opinion of the Board of Appeals.
2. The accessory apartment may be inhabited by no more than two unrelated persons, or a family of no more than four persons.
3. Only the room in which the accessory apartment entrance is located may be used for sleeping, unless Petitioners provide emergency egress from the living

room/den, with the approval of DHCA, to make that qualify as a sleeping room. Such emergency egress may be constructed without requesting a modification of the special exception from the Board of Appeals.

4. Per Code § 59-G-2.00(b)(1), an owner of the property must occupy one of the dwelling units on the subject property.
5. Per Code § 59-G-2.00(b)(3), Petitioners must not receive compensation for more than one dwelling unit on the subject property.
6. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements

On a motion by Stanley B. Boyd, seconded by Walter S. Booth, with Carolyn J. Shawaker and David K. Perdue, Vice-Chair in agreement, and Catherine G. Titus, Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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David K. Perdue  
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28<sup>th</sup> day of May, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63

of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.